IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

Court's order whether the case is or not approved for reporting.

(Chapter VIII Rule 32 (2) (b)

Description of the case

W.P. No. 1237 (S/S) of 2006

AND

W.P. No. 1238 (S/S) of 2006

AND

W.P. No. 1239 (S/S) of 2006

Date of decision: 21-9-2006

~~**A.F.R. (Approved for reporting)**~~

Not approved for reporting

Date: - 21-9-2006 Initial of Judge

Note: - Bench Reader will attach this at the top of the first page of the judgment when it is put before the Judge for signature.

HIGH COURT OF UTTARANCHAL AT NAINITAL

Writ Petition No.1237 (S/S) of 2006

Bal Swaroop S/o Shri Jammi Lal
R/o village & P.O. Paundha
Premnagar, District Dehradun .....Petitioner

Versus

1. State of Uttaranchal
   Through Secretary, Panchayat Raj Department Civil Secretariat, Dehradun
2. District Magistrate, Dehradun
3. District Panchayat Raj Officer
   Dehradun ....Respondents

AND

Writ Petition No.1238 (S/S) of 2006

Hira Singh Negi S/o Sri Ranveer Singh Negi
R/o village Jhajhra
P.S. Sahaspur
District Dehradun .....Petitioner

Versus

1. State of Uttaranchal
   Through Secretary, Panchayat Raj Department
   Civil Secretariat, Dehradun
2. District Magistrate, Dehradun
3. District Panchayat Raj Officer
   Dehradun ....Respondents

AND

Writ Petition No.1238 (S/S) of 2006

Rakesh Sharma
S/o Shri Suresh Chandra Sharma
R/o village & P.O. Jolly Grant
District Dehradun .....Petitioner

Versus

1. State of Uttaranchal
   Through Secretary, Panchayat Raj Department Civil Secretariat, Dehradun
2. District Magistrate, Dehradun
3. District Panchayat Raj Officer
   Dehradun ....Respondents

Dated :-21st September, 2006

Mr. R.P. Nautiyal learned counsel for the petitioners.
Mr. Parvesh Tripathi learned Standing Counsel.

Hon'ble J.C.S. Rawat, J.

1. Since there is a common question of law and fact involved in all the writ petitions, therefore, all the petitions have been heard together and are being disposed of by this single judgment

2. By means of writ petitions under section 226 of the Constitution of India, the petitioners have sought the following common reliefs:-

(i) issue a writ, order direction in the nature of certiorari calling for the records and quashing the impugned order of transfer dated 8.9.2006 (Annexure No. 1 to the writ petitions) passed by District Magistrate, Dehradun-respondent no.2 so far as it relates to the petitioners.

(ii) Pass any other and further orders which the Hon'ble Court may deem fit and proper in the facts and circumstances of the case.

(iii) Award the cost of the petitions to the petitioners.

3. The petitioners, namely Bal Swaroop, Rakesh Sharma and Hira Singh Negi were appointed as Gram Panchayat Adhikari in the year 1992, 1994 & 1981 respectively. All the petitioners were given posting in Block Chakrata, Dehradun and thereafter they were transferred to several places. Lastly, the petitioner-Bal Swaroop was transferred to block Vikasnagar, Dehradun in the month of July 2005 and Rakesh Sharma was transferred to Block Doiwala, Dehradun in the year

2004, whereas Hira Singh Negi was transferred to Block Vikasnagar Dehradun in the year 2003 and since then they are working there as Gram Panchayat Adhikari. On 8.9.2006 the District Magistrate, Dehradun passed an order transferring the petitioners-Bal Swaroop and Rakesh Sharma to Block Chakrata, District. The petitioner-Hira Singh Negi was transferred to Block Kalsi, Dehradun. Feeling aggrieved by the said transfers the present petition has been filed before this Court.

4. Heard learned counsel for the petitioners and Sri Parvesh Tripathi learned Standing Counsel.

5. Learned counsel for the petitioners contended that the transfer policy issued by the respondents indicates that the transfer process would be completed upto 10th July and in case any transfer of Class III & IV is required after 10th July the approval of one level higher officer is necessary. It was further contended that the petitioners were transferred after 10th July and no approval from the higher authorities has been taken. It was further contended that the transfer has been made in utter violation of the transfer policy issued by the respondents. Learned Standing Counsel refuted the contention. It is well settled position of law that the government servant has no right to contend to appoint or post him in a particular place or position, he should continue in such place or position as long as he desires. Transfer of an employee is not only an incident of inherent in the terms of appointment but also implicit as an essential condition of service in the absence of any specific indication to the contra, in the law governing or conditions of service. Unless the order of transfer is shown to be an outcome of a mala fide exercise of power or violative of any statutory, an order of transfer

cannot be interfered with as a matter of course or routine for any or every type of grievance sought to be made. Even the administrative guidelines for regulating the transfers or containing transfer policies at best may afford an opportunity to the officer or servant concerned to approach their higher authorities for redress but cannot have the consequence of depriving or denying the competent authority to transfer a particular employee to any place in public interest and as is found necessitated by the exigencies of service as long as the official status is not affected adversely. A challenge to an order of transfer should normally be eschewed and should not be countenanced by the courts as though they are Appellate Authorities over such orders, which could assess the niceties of the administrative needs and requirements of the situation concerned. The Court while making judicial review of the transfer order would not exercise the power as an appellate authority. The court while exercising the jurisdiction under Article 226 of the Constitution of India would not reappreciate the facts on the basis of which the employee had been transferred. The courts cannot substitute their own decisions in the matter of transfer for that of competent authorities of the State and even allegations of mala fides when made must be such as to inspire confidence in the court or are based on concrete materials and ought not to be entertained on the mere making of it or on consideration borne out of conjectures or surmises and except for strong and convincing reasons, no interference could ordinarily be made with and order of transfer. The transfer order cannot be challenged on the ground that there was a violation of guidelines contained in the government policy or the transfer order cannot be challenged before the Court on the medical ground of

the petitioner or any other person. The guidelines, however, does not confer upon the government employee a legally enforceable right.

6. In the case of **Shilpi Bose Vs., State of Bihar AIR 1991 SC 532**, the lady teachers of Primary schools were transferred on their requests of places where their husbands were posted. The contesting respondents, who were displaces by the teachers, challenged the validity of the transfer orders before the High Court by filing a writ petition under Article 226 of the Constitution, which was allowed and the transfer orders were quashed. The Hon'ble Supreme Court has allowed the appeal and set aside the judgment of the High Court by observing as follows:-

> *"In out opinion, the courts should not interfere with a transfer order which is made in public interest and for administrative reasons unless the transfer orders are made in violation of any mandatory statutory rule or on the ground of mala fide. A government servant holding a transferable post has no vested right to remain posted at one place or the other, he is liable to be transferred from one place to the other. Transfer orders issued by the competent authority do not violate any of his legal rights. Even if a transfer order is passed in violation of executive instructions or orders, the court ordinarily should not interfere with the order instead affected party should approach the higher authorities in the department."*

7. There is no malafide or violation of statutory rules in the case in hand. In the case of **Union of India Vs. S.L. Abbas (1993) 4 SCC 357**, the respondent-Abbas was working at shillong in the office of the Botanical Survey of India and his wife was also working there in a Central Government office. He was tranasferred from Shilliong to Pauri in the hills of U.P. (now in Uttaranchal).

He challenged the transfer order before the Central Administrative Tribunal on medical ground and also on the ground of violation of guidelines contained in the Government of India OM dated 3.4.1986.The Tribunal allowed the petition and quashed the transfer order. When the matter came before the Hon'ble Supreme Court, the Hon'ble Supreme Court set aside the order of the Tribunal and observed as under:

> *"7. Who should be transferred where, is a matter for the appropriate authority to decide. Unless the order of transfer is vitiated by mala fides or is made in violation of any statutory provisions, the court cannot interfere with it. While ordering the transfer, there is no doubt, the authority must keep in mind the guidelines issued by the Government on the subject. Similarly if a person makes any representation with respect to his transfer, the appropriate authority must consider the same having regard to the exigencies of administration. The guidelines say that as far as far as possible, husband and wife must be posted at the same place. The said guideline however does not confer upon the government employee a legally enforceable right."*

8. It was further contended that the transfer order had been made on the political pressure. But, no details has been given to this effect. As I have already pointed out if the malafide had been alleged against the transferring authority it should inspire confidence on the basis of the material available before the court. Merely stating that there was a political pressure upon the respondents is not sufficient. It could not be demonstrated before me that how the political pressure was exerted upon the respondents. In view of the foregoing discussion, I do not find any force in the said argument.

9. Learned counsel for the petitioners contended that the impugned order was issued on 8.9.2006 by the respondent no.2-District Magistrate, Dehradun and a notification was issued for election of Pradhan Gram Panchayat and Upper Gram Panchayat in pursuance of the notification issued on 2.9.2006 by the State Election Commissioner, Dehradun. After issuance of the said notification, the 'Aachar Sahinta' had become applicable with immediate effect. Learned counsel for the petitioners contended that the code of conduct provides that no official would be transferred who is associated with the election to any other place. Learned Standing Counsel refuted the contention and contended that he has got the instructions that the transfer order was made prior to the issuance of the Aachar Sahinta. It has to be seen as to whether the said notification of Aachar Sahinta has been issued in pursuance of any Act or rules. It could not be demonstrated that whether the Aachar Sahinta has been issued under any of the Rules, Regulation of Act. Learned counsel for the petitioners relied upon a section 159 of the Representation of the Peoples Act which only provides that the authorities concerned shall provide the election staff during the election season. It could not be demonstrated that under what provision of law it has a statutory force. It the Aachar Sahinta has no statutory force the Court cannot get it enforced in view of the findings recorded in the preceding paragraph of my judgment.

10. Learned counsel for the petitioners further contended that the transfer order can only be passed either on the administrative ground or on the public interest or on mutual consent. There is no roaster system to transfer the employees. It was further

contended that the impugned order has been passed on the basis of roaster system. But, no rule has been shown by which the transfer order can only be passed on the aforesaid ground. It a particular word is used in the transfer order, it is immaterial if any statutory rule would have been violated.

11. In view of the foregoing discussion, I am of the view that I do not find any force in the contentions of the learned counsel for the petitioners. Therefore, the petitions are devoid of merit and is liable to be dismissed.

12. The petitioners are dismissed accordingly. No order as to costs.

(J.C.S. Rawat, J.)

Dated 21.09.2006

LSR